

## TERMS AND CONDITIONS OF TRADE

### 1. Parties

- eReports UK (eReports)
- Client
- Consultant

### 2. Background

eReports provides consultant medical services including medical reports. The parties agree that eReports will procure the Services as ordered by the Client and Client will pay eReports for such Services in accordance with this Agreement.

These terms and conditions of trade have been developed in accordance with relevant legislation.

### 3. Term

- 3.1. This Agreement:
- 3.1.1. subject to clause 4, commences on the Commencement Date.
  - 3.1.2. ends on the Termination Date; and applies to all Service Bookings Requests given by Client to eReports while this Agreement is in force.

### 4. Conditions Precedent

- 4.1. This Agreement is subject to and conditional upon eReports determining in the affirmative Client's creditworthiness with respect to the Services.
- 4.2. Each party must provide all reasonable assistance to the other as is necessary to satisfy the Conditions.
- 4.3. The Conditions are for the benefit of eReports alone.
- 4.4. eReports may terminate this Agreement on or before the Sunset Date by notice in writing to the other party if, after having made all reasonable inquiries, eReports reasonably concludes that any of the Conditions clause 4.1:
  - have not been satisfied; or
  - are incapable of being satisfied.
- 4.5. If this Agreement is not terminated under clause 4.4 within 14 days after the Commencement Date, this Agreement becomes binding on the parties.

### 5. eReports Obligations

- 5.1. eReports must, subject to the terms and condition of this agreement:
- 5.1.1. procure the carrying out of each booked Services during the Period; and
  - 5.1.2. in carrying out the Services:
    - use their best skill, judgment and ability; and
    - comply with the Law

### 6. Fees

- 6.1. The Client must pay the Fees by the Payment Due Date.
- 6.2. If the Client fails to comply with clause 6.1, the Client may be required to pay liquidated damages to eReports at a rate commensurate with the Late Payments of Commercial Debts (Interest) Act 1998 compounding daily on the overdue amount until it is paid in full.
- 6.3. The parties agree that:
  - clause 6.2 is not a penalty and is a genuine pre-estimate of loss likely to be suffered by the party receiving the liquidated damages for the Obligation; and

- if a court of competent jurisdiction determines that (contrary to the intention of the parties) any liquidated damages constitute a penalty, those liquidated damages will reduce to such amounts as the court considers not to constitute a penalty.
- 6.4. Any amount payable by a client under this agreement must be paid:
- into such account; and
  - in such manner, as directed by eReports from time to time in eReports' discretion.

## **7. Service Bookings**

- 7.1. Client must:
- make Service Bookings in such manner and form as eReports directs from time to time; and
  - ensure that each Service Booking contains all such information as eReports requires from time to time.
- 7.2. Each Service Booking by Client is an offer to purchase Services from eReports on the terms and conditions of this Agreement.
- 7.3. No Service Booking is binding until eReports agrees in writing to supply the Service Booking.
- 7.4. eReports may reject a Service Booking in its absolute discretion.
- 7.5. eReports does not represent or warrant that it is able to supply any particular quantity of any Services at any time.
- 7.6. A quotation given by eReports to Client does not constitute a binding agreement to supply.
- 7.7. Unless otherwise agreed, eReports must procure the relevant Report to be delivered to the Client on the Report Due Date.
- 7.8. Notwithstanding anything stated in this agreement, eReports is not obliged to perform a Service unless and until eReports has received:
- a copy of the relevant eReports-designated consent form properly executed by the Examinee; and
  - any other requested Examinee Material.

## **8. Cancellation/Non-Attendance**

- 8.1. The Client may cancel a Service Booking by notice to eReports.
- 8.2. If a notice under clause 8.1 is received by eReports later than Latest Cancellation Date the Client must pay a Cancellation Fee.
- 8.3. Subject to clause 8.1 and 8.2, If a booked Examinee does not attend a booked Service Attendance the Client must pay a Non-Attendance Fee.
- 8.4. The Client must pay any amounts payable under clause 8.2 or 8.3 within 14 days after receipt of an invoice in respect of same, unless otherwise agreed in writing.
- 8.5. The Client must procure delivery of all Examinee Material to eReports within the time prior to the appointment or date of service delivery as directed by eReports.
- 8.6. If the Client breaches clause 8.5:
- eReports may cancel the proposed Service Attendance; and/or
  - the Client is liable to pay a Non-Attendance Fee.

## **9. Intellectual Property**

- 9.1. Client acknowledges that all IP Rights subsisting in any IP (including Reports and Report Material) vest in and belong solely and exclusively to the relevant Consultant.
- 9.2. Client:
- waives any and all rights which are incapable of assignment, including moral rights, in and to any IP.

- must, upon request of eReports, grant a similar waiver in respect of any product of any IP; and
  - must sign all documents and do anything reasonably requested by eReports to effect any such waiver or perfect eReports' IP Rights under this agreement.
- 9.3. Subject to payment in full by the Client of the relevant invoice, eReports' grants Client a limited, irrevocable, royalty-free, worldwide, license to use the Reports for the purposes reasonably contemplated by this Agreement taking into account the referral instruction given by the Client after booking a Service (if any).

## 10. Retention of Title

- 10.1. Client acknowledges that until the Client pays to eReports the whole of the Purchase Price:
- Client holds all Reports as eReports' bailee.
  - a fiduciary relationship exists between eReports and Client in respect of such Reports; and
  - Client must not Transfer or attempt to Transfer the Reports.

## 11. Confidentiality

- 11.1. Each party understands and acknowledges that such party owes a duty of fidelity and a duty of confidentiality to the other party.
- 11.2. A party must:
- not disclose or permit the disclosure of the other party's Confidential Information to any third party without the other party's prior written consent; and
  - use reasonable endeavours to ensure the Confidential Information is not disclosed to any third party.

## 12. Security and Data Protection

- 12.1. The Client must use best endeavours to maintain the secrecy and security of all identification and login information used to order Services.
- 12.2. Promptly:
- comply with the Privacy Law with respect to Examinees and Reports; and
  - upon request provide all reasonable assistance to eReports with respect to matters of Privacy Law compliance.

## 13. Termination

- 13.1. Without prejudice to any other right or remedy which a party may have at Law, a party ("First Party") may immediately terminate this Agreement at any time if the other party ("Second Party"):
- commits multiple or recurring breaches of this Agreement, whether remedied or not.
  - does not procure or cannot procure rectification a breach of a non-Essential Term, within 14 days after receipt by the other party of a written notice reasonably specifying the breach.
  - ceases, or indicates that it is about to cease, carrying on its business; or
  - is the subject of an Insolvency Event.
- 13.2. Either party may terminate this Agreement by not less than seven days' notice to the other party.

## 14. Warranties

By signing this Agreement, the Client warrants and continues to warrant that:

- 14.1. the Client acts for each Examinee or otherwise has the authority to makes Service Bookings in respect of each Examinee.
- 14.2. has financial capacity to pay for each booked Service.
- 14.3. if the Client is a trustee of any trust:
  - the trust is validly constituted and subsisting.
  - it enters into this agreement in its own capacity and for and on behalf of and with the power and authority of each and every such trust of which it is trustee.
  - the terms of the relevant trust do not restrict if eReports' rights under this agreement including to recourse to the assets of the Trust to satisfy any monies that may become owing under this agreement; and
  - there is no conflict of interest and duty of the trustee or its directors, which would preclude the Trustee from entering into this agreement.
- 14.4. The person signing this Agreement on behalf of Client warrants that they are duly authorised to sign this Agreement on behalf of Client.
- 14.5. The Client must immediately notify eReports of any change of its company name.
- 14.6. The Client gives eReports unconditional consent and authorisation to:
  - obtain Credit Information from a credit reporting agency; and
  - disclose Credit Information to a credit reporting agency,
  - for the purpose of:
    - deciding whether to provide or continue to provide credit to Client; or
    - attempting to recover any monies owing by Client to eReports.

## **15. Indemnity, Disclaimer and Waiver**

- 15.1. The Client acknowledges and agrees that:
  - the information in a Report may include information provided to eReports from third parties including Consultants; and
  - eReports does not and cannot guarantee or warrant the correctness, completeness, merchantability or fitness for a particular purpose of any Report.
- 15.2. The Client indemnifies eReports and its eReports' officers, employees, shareholders, agents and contractors against all Claims arising from:
  - any breach by Client of this Agreement.
  - any wilful misconduct, or unlawful or fraudulent act or omission of Client or Client's Personnel in connection with this Agreement, any Service or a Report.
  - the use or misuse by Client or its Personnel of any Report including any information obtained or derived through any Report.
  - reliance by Client's or any of Client's Personnel's on including any information obtained or derived through any Report; and
  - any decision made by Client or any of its Personnel using or in reliance upon any Report or any information obtained or derived through any Report.
- 15.3. eReports is not providing advice to Client with respect to Client's obligations under or compliance with any Law with respect to Reports.
- 15.4. The Client should make their own with respect to Client's obligations under or compliance with any Law with respect to Reports.
- 15.5. The Client assumes all risk in connection with the Client's use of Reports.
- 15.6. eReports is not liable to Client for Damages relating to the correctness, completeness, merchantability or fitness for a particular purpose of any Report, except where caused by eReports' negligence, wilful misconduct or fraudulent conduct.
- 15.7. A party ("First Party") is not liable for any Claim brought by a third party against the other party ("Second Party") in relation to a matter pertaining to this Agreement if:
  - the Second Party does not notify First Party of the third party's claim or of infringement of copyright within seven days after becoming aware of such Claim.

- the First Party's ability to defend the claim has been prejudiced by the Second Party's non-compliance with any of its obligations under this Agreement.
  - the Second Party does not give the First Party reasonable assistance in defending such Claim; or
  - the Second Party does not permit the First Party to have control of the defence of the Claim and all related settlement negotiations.
- 15.8. Notwithstanding anything in this Agreement to the contrary, a party is not liable to another party ("Other Party") with respect to a Claim to the extent that the loss and damage the subject of such Claim is caused or contributed to by the negligence or unlawful act of:
- the relevant Examinee.
  - the Other Party (including Personnel); or
  - the Other Party's Related Entity (including Personnel).
  - is a consequence of a direction or information given by the Other Party (including Personnel); or
  - comprises Consequential Loss.
- 15.9. Nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or liability implied in this Agreement or protected by law to the extent that such exclusion, restriction or modification would render this Agreement or any provision of this Agreement void, illegal or unenforceable.
- 15.10. Subject to clause 15.9, any condition, warranty, right or liability which would otherwise be implied in this Agreement or protected by law is excluded.
- 15.11. Pursuant to Chapter 43 of the Consumer Protection Act 1987:
- 15.11.1. this clause 15.11 applies in respect of any of the goods or services supplied under this Agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this clause 15.11 will not apply if a Party establishes that reliance on it would not be fair and reasonable.
- 15.11.2. liability for breach of a guarantee conferred by the Consumer Protection Act 1987, other than those conferred in Chapter 43 of that Law, is limited:
- in the case of goods, to any one of the following as determined by the Party having to provide the remedy:
    - the replacement of the goods or the supply of equivalent goods.
    - the repair of the goods.
    - the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - the payment of the cost of having the goods repaired; and
  - in the case of services, to any one of the following as determined by the Party having to provide the remedy:
    - the supplying of the services again; or
    - the payment of the cost of having the services supplied again.
- 16. Force Majeure**
- 16.1. A party is not liable for any Damages caused by a Force Majeure Delay.
- 16.2. A Party's performance of an Obligation is suspended for the period of any Force Majeure Delay.
- 16.3. If a party is the subject of a Force Majeure Delay, it must notify the other party of the reason and extent of the Force Majeure Delay within two Business Days.
- 17. Value-Added Tax (VAT)**
- 17.1. For the purpose of this clause:

- VAT means Value-Added Tax within the meaning of the Value-Added Tax Act 1994.
  - expressions set out in this clause bear the same meaning as those expressions in the Value-Added Tax Act 1994.
- 17.2. To the extent that a party makes a taxable supply in connection with this Agreement, except where express provision is made to the contrary, and subject to this clause, the consideration payable by a party under this Agreement represents the value of the taxable supply for which payment is to be made.
- 17.3. If a party makes a taxable supply in connection with this Agreement for a consideration which, under clause 17.2, represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any VAT payable in respect of the taxable supply.
- 17.4. A party's right to payment under clause 17.3 is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.

## 18. Notices

- 18.1. Any notice given by one party to the other under this Agreement:
- 18.2. must be in written English and served by email to [admin@ereports.uk](mailto:admin@ereports.uk)
- 18.3. notices served by email are deemed to be served at the time of receipt provided for by the Electronic Communications and Transactions Act 2000.

## 19. Miscellaneous

- 19.1. Each party must:
- at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this document and all transactions incidental to it; and
  - refrain from doing anything that might hinder performance of this Agreement.
- 19.2. This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.
- 19.3. This Agreement is binding on the parties on the exchange of counterparts.
- 19.4. A copy of this Agreement transmitted electronically in any file format including Portable Document Format ("PDF") that bears the signature of a party or parties constitutes and is deemed to be an original, duly authorised, irrevocable, actual, current delivery of this Agreement (or any amendment thereto) signed by such party or parties.
- 19.5. This document:
- constitutes the entire agreement between the parties.
  - contains everything the parties have agreed in relation to the subject matter it deals with; and
  - supersedes and excludes all prior representations, discussions, communications, understandings and agreements in any form (if any) between the parties.
- 19.6. eReports may give Client notice that it intends to vary any terms and conditions of this Agreement at any time in its discretion.
- 19.7. The Client's continued use of the Services after receiving notice under clause 19.6 constitutes acceptance of the relevant variation.
- 19.8. eReports may vary the standard rate at any time in its discretion without notice to the Client.
- 19.9. Subject to clause 19.6, this Agreement must not be changed or modified in any way subsequent to its execution except in writing signed by the parties.
- 19.10. If any provision of this Agreement is invalid, unlawful, void or unenforceable it will be taken to have been severed without affecting any other of the provisions of this Agreement.

- 19.11. The Client's rights, remedies, powers, duties or Obligations under this Agreement party are not Transferrable except with the prior written consent of each of the other parties.
- 19.12. eReports may Transfer all or any part of eReports' rights (including rights to payment), remedies, powers, duties or Obligations under this Agreement to any person, without Client's consent.
- 19.13. The covenants, rights, entitlements, duties, warranties, conditions, provisions, undertakings, and obligations contained in this Agreement do not merge upon the end of this Agreement but to the extent that they:
- have not been fulfilled and satisfied before.
  - are capable of having effect after; or
  - have accrued before (including the right to sue for damages or specific performance), the end of this Agreement, remain in full force and effect notwithstanding the end of this Agreement for any reason
- 19.14. The rights, remedies and obligations provided in this Agreement are cumulative and do not adversely affect any other rights, remedies or obligations described in this Agreement or otherwise provided by law.
- 19.15. This Agreement is governed by the laws of the UK.
- 19.16. The parties submit to the jurisdiction of the courts of UK.

## **20. Defined Terms and Interpretation**

In this document including the background, execution pages, any appendices and/or schedules, except where the context otherwise requires:

- 20.1. the terms listed have the meaning set out
- 20.2. another grammatical form of a defined word or expression has a corresponding meaning.
- 20.3. the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions.
- 20.4. the singular includes the plural and vice versa, and a gender includes other genders.
- 20.5. a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this document, and a reference to this document includes any schedule or annexure.
- 20.6. a reference to a time or date is to time or date in the Jurisdiction.
- 20.7. a reference to "£", "Pound" or "Pound Sterling" (GBP) is to the Default Currency.
- 20.8. a reference to a party is to a party to this document, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes.
- 20.9. a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity.
- 20.10. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- 20.11. a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time.
- 20.12. a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form.
- 20.13. a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it.
- 20.14. a reference to anything includes any part of that thing and a reference to a group of things or persons includes each thing or person in that group.
- 20.15. any discretion (including where a party "may" do anything) is sole, unfettered and absolute unless otherwise stated; and

20.16. headings are for ease of reference only and do not affect interpretation.

## 21. Definitions

The following terms have the following meanings:

- Agreement means includes any schedules, annexures, appendices and attachments to this Agreement.
- Business Day means any day that is not a Saturday, Sunday or Public Holiday:
  - in the case of a notice, in the city that the party to be notified is situate.
  - in the case of an Obligation, in the city that the party obliged to perform such Obligation is situate; or
  - otherwise, in the Jurisdiction.
- Business Hours means between 9:00 AM to 5:00 PM (GMT):
  - in the case of a notice, in the city that the party to be notified is situate; and
  - in the case of an Obligation, in the city that the party obliged to perform such Obligation is situate; or
  - otherwise, in the Jurisdiction, on a Business Day.
- Claim means any claim, demand, Proceeding or cause of action of any nature whatsoever (including for Damages):
  - whether in statute, contract, tort, warranty, strict liability, or any other legal theory or basis; and
  - whether for money or otherwise, arising out of or in connection with a particular subject matter.
- Confidential Information means information, in any form and whether original or Copy, which is confidential to a party including, but not limited to, information which a party becomes aware before or after the date of this Agreement:
  - pertaining to this Agreement.
  - that has been specifically designated as confidential.
  - the unauthorised disclosure of which would embarrass, harm or prejudice the other party or its business.
  - otherwise relating directly or indirectly to the other party's Clients, business transactions, business methods, financial affairs, commercial activities, trade secrets, passwords, know-how, databases, Client lists, specifications, records and software; and
  - pertaining to the other party's IP,
  - but, not including information that now or in the future is in the public domain other than due to a breach of this Agreement.
- Consequential loss means direct or indirect loss of profit; revenue; expenses; income; business opportunity; goodwill production; indirect, incidental, exemplary, special or punitive damages; third party claims or any other any indirect or consequential loss or liability in connection with or arising out of this Agreement.
- Consultant means any third-party surgeon, doctor other professional that contributes to a given Report.
- Copy includes any copy, record, summary, memorandum or annotation.
- Currency means "£", "Pound" or "Pound Sterling" (GBP).
- Damages means all liabilities, losses, damages, costs and expenses (including all legal costs on a solicitor and own client basis) whether incurred by or awarded against a person and disbursements and costs of investigation, litigation, settlement, judgment, interest, fines and penalties, arising out of a right under this Agreement or a cause of action in connection with the operation of this Agreement (including any indemnity), including breach of contract, tort (including negligence) and any other common law, equitable or statutory cause of action.
- Examinee means the individual that is the subject of a Service.



- Examinee Material means true, complete and correct information and signed Consent Forms with respect to an Examinee or proposed Examinee as required by this agreement or requested by eReports from time to time.
- Fee means the amount specified in an invoice for Services.
- Force Majeure Delay means the period during which a party is unable to perform an Obligation due to an actual Force Majeure Event.
- Force Majeure Event means any event beyond the reasonable control or prevention of the non-performing party including:
  - external telecommunications failures.
  - fire, flood, earthquake or act of God and any other natural disaster.
  - riot, act of terrorism, war, civil disorder, rebellion or revolution.
  - strikes, lockouts and labour disputes (but excluding a facility specific strike of any other type of industrial action by the Personnel of a party claiming force majeure); and
  - epidemics, quarantine restrictions, outbreak of disease or any travel restrictions or bans (including bans on non-essential travel) issued by the World Health Organisation or any governmental authority.
- Gazetted Fee means a fee for a Service as specified under the Law (if any).
- Insolvency Event means any of the following under the Law including the Companies Act 2006 or its equivalent in any jurisdiction:
  - bankruptcy.
  - insolvency or presumed insolvency.
  - liquidation.
  - administration.
  - winding-up.
  - failure to comply with a statutory demand.
  - inability to pay debts; and
  - an analogous or equivalent event to the above,
  - other than for the purposes of reconstruction or amalgamation
- IP means any novel or original work in any form resulting from intellectual activity in the industrial, commercial, scientific, medical, literary or artistic fields including discoveries, inventions, improvements, modifications, innovations, processes, software codes, formulae, artistic works and circuit layouts.
- IP Rights means all present and future intellectual property rights of any nature whatsoever conferred by statute, common law, equity or otherwise including all intellectual property as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967 whether or not registered or registrable.
- Item means an Item in Schedule 1.
- Latest Cancellation Date means before 5:00 PM (GMT) on the day being three Business Days before the date of the booked Service Attendance time/date,  
*example:*  
*Booked Service Attendance time/date: 3:30 PM on Thursday 15 June 2017*  
*Latest Cancellation date: 5:00 PM on Monday 12 June 2017*
- Law means any and all:
  - means all applicable laws from time to time including common law, legislation and subordinate legislation and ordinances, codes, regulations and by-laws of relevant government, semi-government or local authorities and other instruments under any of them.
  - permits, authorisations, consents, judgments, orders or decrees of any governmental agency or judicial or quasi-judicial body; and
  - the relevant party's constituent documents.

- National Standard means eReports' current schedule of rates and fees as at the date of the Service Booking as notified to the Client or, failing notification, as published on the eReports website from time to time.
- Obligations means any and all of a party's obligations under this Agreement.
- Personnel means in relation to a party, that party's officers, employees, agents, volunteers and contractors.
- Privacy Law means the UK Data Protection Act 2018, GDPR, or its equivalent in any applicable jurisdiction and any applicable law with respect to the privacy of Reports or information concerning individuals including any determination or guideline issued under such Law.
- Proceedings means legal proceeding including arbitration in any court or quasi-judicial tribunal in any jurisdiction but not including proceedings in the nature of an application for interlocutory relief.
- Public Holiday means days which are declared as gazetted or specified under the relevant law as public holidays in the Jurisdiction.
- Related Entity means a Related Body Corporate as defined in the Companies Act 2006.
- Report means a Consultant's written report with respect to an Examinee.
- Report Material means all materials, information and databases used by a Consultant or eReports to provide a Report.
- Service Attendance means the examination of or meeting between an Examinee and a Consultant to inform a Service at the place and time as directed by eReports.
- Service Booking means an order for the purchase of Services by Client from eReports whether oral or written.
- Services means services provided or procured by eReports under this Agreement including Examinations and Reports.
- Term means the period of time between the Commencement Date and the Termination Date.
- Termination Date means the date this Agreement is terminated or ends in accordance with this Agreement.
- Transfer means transfer, sell, assign, novate, Encumber or deal with.